

## RESOLUTION NO. A-\_\_\_\_\_

1 WHEREAS, Reynold McMeen dba "Misty's Steakhouse and Brewery" has  
2 submitted an application for a Sidewalk Cafe Permit to use a portion of the public right-  
3 of-way at 200 N. 11th Street as a sidewalk cafe; and

4 WHEREAS, the applicant is willing to comply with all of the provisions of  
5 Chapter 14.50 of the Lincoln Municipal Code pertaining to such use; and

6 WHEREAS, the application has been reviewed by the Planning  
7 Department, the Public Works and Utilities Department, and the Urban Design  
8 Committee, each of which has submitted a report in conformance with § 14.50.050 of  
9 the Lincoln Municipal Code.

10 NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of  
11 Lincoln, Nebraska:

12 That the application of Reynold McMeen dba "Misty's Steakhouse and  
13 Brewery", hereinafter referred to as "Permittee", to operate a sidewalk cafe in a portion  
14 of the public right-of-way at 200 N. 11th Street is hereby approved conditioned upon  
15 such use conforming to the application which is attached hereto as Exhibit "A", the site  
16 plan which is attached hereto as Exhibit "B", the provisions of Chapter 14.50 of the  
17 Lincoln Municipal Code and the following express terms, conditions, and requirements:

18 1. This permit authorizes a maximum seating capacity of 46 within the  
19 permit area as shown on the site plan.

1                   2.     Permittee shall maintain a clear, unobstructed passageway entirely  
2 across the frontage of the property occupied by the Permittee parallel to the line of the  
3 street and generally in the line of pedestrian traffic as shown on the site plan.

4                   3.     The permit area shall be separated from the pedestrian  
5 passageway with a fence or other rigid barrier having a minimum height of 36" but not  
6 greater than 60" except for necessary pedestrian ingress and egress as shown in the  
7 application.

8                   4.     The space to be occupied by this use shall only be used for the  
9 activity or activities specified on the permit and in accordance with all applicable  
10 regulations.

11                  5.     Such use is temporary and the Permittee, by the granting of this  
12 permit, acquires no right, title, or interest in the space permitted to be used.

13                  6.     The City Council may require such space to be vacated, restored to  
14 its prior condition upon demand, and its use discontinued, with no recourse against the  
15 City for any loss or damage occasioned thereby. If any such space is not vacated and  
16 restored to its prior condition and such use not discontinued by the time specified, the  
17 City may remove from such space any property left thereon at the risk and expense of  
18 the Permittee and restore such space to its prior condition at the expense of the  
19 Permittee.

20                  7.     The Permittee shall promptly remove any litter deposited on or in  
21 the vicinity of the space used by the Permittee resulting from the activity or activities  
22 conducted by the Permittee.

23                  8.     The Permittee shall at all times conduct their use of the space in an

1 orderly fashion and in such a manner as to protect the public health and safety.

2 9. Such space shall be used for business purposes by Permittee only  
3 between the hours of 11:00 a.m. to 11:00 p.m. Monday through Thursday, 11:00 a.m.  
4 to 1:00 a.m. Friday and Saturday, and 6:00 p.m. to 11:00 p.m. Sunday.

5 10. The Permittee shall comply with all health and sanitation  
6 regulations.

7 11. The permit issued pursuant to this section is a personal privilege  
8 and may not be transferred or alienated voluntarily or involuntarily.

9 12. Where exigent circumstances exist and a police officer or other  
10 authorized officer or employee of the City gives notice to Permittee to temporarily move  
11 from a location, Permittee shall comply with the notice. Exigent circumstances shall  
12 include, but not be limited to, unusually heavy pedestrian vehicular traffic, existence of  
13 any obstructions in the public space at or near such location, an accident, fire, or other  
14 emergency situation at or near such location, or parade, demonstration, or other such  
15 event or occurrence at or near such location.

16 13. Permittee shall not sound or permit the sounding of any signal from  
17 any stationery bell, chime, siren, whistle, or device for non-emergency purposes or use  
18 or operate any loud speaker, public address system, radio, sound amplifier, or similar  
19 device which may be heard beyond 50 feet from its source.

20 14. No advertising shall be permitted on or in the sidewalk cafe except  
21 to identify the product or vendor and shall in all respects comply with the provisions of  
22 Titles 22 and 27 of the Lincoln Municipal Code regulating signage.

23 15. Any umbrella, canopy, or similar device within the permit area shall

1 be no more than 6½ feet above ground level.

2 16. The sidewalk cafe shall be located only in the exact location  
3 described in the approved application, and the approved furnishings may not be  
4 modified or substituted.

5 17. The Permittee shall at all times maintain public liability insurance in  
6 the form of a commercial or comprehensive general liability policy, or an acceptable  
7 substitute policy form as permitted by the City Attorney, with a minimum combined  
8 single limit of \$500,000 aggregate for any one occurrence, and shall at all times keep  
9 on file with the City Clerk a current certificate of insurance signed by a qualified agent of  
10 an insurance company licensed to do business in the State of Nebraska evidencing the  
11 existence of valid and effective policies of insurance naming the City as an additional  
12 insured for the coverage required above, the limits of each policy, the policy number,  
13 the name of the insurer, the effective date and expiration date of each policy, the  
14 deductibles or self-insurance retainers of each policy, and a copy of an endorsement  
15 placed on each policy requiring 30 days notice by mail to the City Clerk before the  
16 insurer may cancel the policy for any reason, and upon request of the City Clerk or the  
17 City Attorney, a copy of any endorsements placed on such policies or the declarations  
18 page of such policies. Any termination or elapse of such insurance shall automatically  
19 revoke this permit.

20 18. This permit shall expire on the 31st day of May following its  
21 issuance, but renewal of the permit may be made for one-year periods by application to  
22 the City Clerk and payment of the annual permit fee as set forth in Chapter 14.50 and

1 the payment of the rental for the use or occupation of the space computed as follows:  
2 \$.25 per annum for each square foot of the permit area (562 square feet) for an annual  
3 rental of \$140.50; provided, however, said rental may be increased for future years by  
4 action of the City Council.

5 19. That within thirty (30) days from the adoption of this resolution, and  
6 before commencing any construction under the provisions hereof, the above-named  
7 applicant shall execute the letter of acceptance attached hereto and marked as Exhibit  
8 "C". Failure to do so will be considered a rejection hereof and all privileges and  
9 authorities hereunder granted shall thereupon automatically terminate.

Introduced by:

\_\_\_\_\_

Approved as to Form and Legality:

\_\_\_\_\_  
City Attorney

Approved this \_\_\_\_ day of \_\_\_\_\_, 2003:

\_\_\_\_\_  
Mayor